

PLR 200148038, 2001 WL 1521701 (IRS PLR)

Internal Revenue Service (I.R.S.)

Private Letter Ruling

Issue: November 30, 2001

August 30, 2001

Section 7871 -- Indian Tribal Governments Treated As States For Certain Purposes
7871.00-00 Indian Tribal Governments Treated As States For Certain Purposes

CC: TE / GE:EOEG:EO2, PLR-117291-00

Re:

Legend

A =

Tribe =

Council =

Committee =

Act =

Dear *** :

This letter is in response to a request submitted by your representative on March 9, 2000 for a ruling that A is a political subdivision of Tribe.

FACTS AND REPRESENTATIONS

Tribe is listed in [65 Fed. Reg. 13298 \(March 13, 2000\)](#) as a federally recognized tribe and in [Rev. Proc. 2001-15, 2001-5 I.R.B. 465](#) as a tribe that is treated as a state for specified purposes under the Internal Revenue Code ("the Code"). Council, as the governing body of Tribe, approved Act pursuant to its role of exercising the general governmental functions of Tribe. The purpose of Act is to provide for governance at the local level by delegating to local bodies certain governmental authority over local matters, consistent with Tribal tradition. Pursuant to Act, A was formed and was delegated local governing authority by Committee of the Council.

A represents that it has police powers. Under the terms of an agreement between A and the Department of Interior and Bureau of Indian Affairs, A will provide 24-hour law enforcement and detention services on their reservation, provide effective crime prevention and community oriented police services, and ensure that secure detention facilities are maintained. The scope of work includes the investigation of all federal crimes pursuant to an agreement with the United States Attorney. Law enforcement activities include investigation of misdemeanor crimes, traffic enforcement, preventive patrols, sobriety checkpoint and saturation patrols, response to domestic violence calls, and participation in a domestic violence prevention program. A will also provide youth oriented services such as a police explorer program and gang resistance education and training programs.

Under Act, A may adopt certain ordinances, including ordinances to amend the land use plan to meet the changing needs of the community; to acquire property by eminent domain; zoning ordinances consistent with A's community-based land use plan; regulatory ordinances for governmental purposes, the enforcement of which shall be by A for the general health, safety and welfare of the A community and consistent with Tribe's

law; and local taxes pursuant to a local tax code developed by Tribe. A also has a limited power of eminent domain which can be applied to certain improvements to land and intangibles of individuals.

LAW AND ANALYSIS

The Indian Tribal Governmental Tax Status Act of 1982 (Title II of Pub. L. No. 97-473, 1983-1 C.B. 510, 511, as amended by [Pub. L. No. 98-21, 1983-2 C.B. 309, 315](#)) added provisions to the Internal Revenue Code that pertain to the tax status of Indian tribal governments. For two years beginning in 1983, Indian tribal governments were to be treated as states for some federal tax purposes.

Section 1065 of the Tax Reform Act of 1984, 1984-3 (Vol. 1) C.B. 556, made permanent the rules treating Indian tribal governments (or subdivisions thereof) as states (or political subdivisions thereof) for specified federal tax purposes. See [Rev. Proc. 86-17, 1986-1 C.B. 550](#).

Section 7701(a)(40)(A) defines the term "Indian tribal government" as the governing body of any tribe, band, community, village, or group of Indians, or (if applicable) Alaska Natives, which is determined by the Secretary, after consultation with the Secretary of the Interior, to exercise governmental functions.

Section 7871(a) treats an Indian tribal government as a state for certain specified tax purposes. In the legislative history to § 7871(a), Congress indicated that this provision of the Code will not apply to any Indian tribal government unless it is recognized by the Treasury Department, after consultation with the Interior Department, as exercising sovereign powers. The legislative history provides that sovereign powers include the power to tax, the power of eminent domain, and police powers (such as control over zoning, police protection, and fire protection). H.R. Conf. Rep. No. 984, 97th Cong., 2d Sess. 15 ([1982](#)), [1983-1 C.B. 522](#).

Indian tribes possess inherent sovereignty except where it has been limited by treaty or statute, or by implication as a necessary result of their dependent status. Indian tribes are viewed as having certain inherent powers, including the power to tax and administer justice, whether they choose to take actions to exercise them or not. A written constitution or other governing document is not a prerequisite for the exercise of inherent sovereign powers. See [United States v. Mazurie, 419 U.S. 544 \(1975\)](#); [Merrion v. Jicarilla Apache Tribe, 455 U.S. 130 \(1982\)](#); [United States v. Wheeler, 435 U.S. 313 \(1978\)](#); [Kerr-McGee Corp. v. Navajo Tribe of Indians, 471 U.S. 195 \(1985\)](#); [Washington v. Confederated Tribes of Colville Indian Reservation, 447 U.S. 134 \(1980\)](#); [Iron Crow v. Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota, 231 F.2d 89 \(8th Cir. 1956\)](#); and Powers of Indian Tribes, 55 I.D. 14 (1934), 1 Op. Sol. on Indian Affairs, 445 (U.S.D.I. 1979).

Section 7871(d) provides that for purposes of § 7871(a), a subdivision of an Indian tribal government shall be treated as a political subdivision of a state if (and only if) the Secretary of the Treasury determines (after consultation with the Secretary of the Interior) that such subdivision has been delegated the right to exercise one or more of the substantial governmental functions of the Indian tribal government.

[Rev. Proc. 84-36, 1984-1 C.B. 510](#), provides a list of subdivisions of Indian tribal governments that are to be treated as political subdivisions of a state for specified purposes of the Code.

[Rev. Proc. 84-37, 1984-1 C.B. 513](#), modified, [Rev. Proc. 86-17, 1986-1 C.B. 550](#), provides procedures for a governmental unit of an Indian tribe or a political subdivision of an Indian tribal government not included on the list published in [Rev. Proc. 84-36](#) to request a ruling qualifying it for treatment as a state or a political subdivision of a state as provided under § 7871 of the Code.

Section 2.03 of [Rev. Proc. 84-37](#) provides that a subdivision of an Indian tribal government that has been delegated one of the generally accepted sovereign powers may qualify as a political subdivision of a state as provided under § 7871(d). Section 2.03 indicates that the generally accepted sovereign powers of states are the power to tax, the

power of eminent domain, and the police power.

A has the police power described above; the power to amend the local land use plan; a limited power of eminent domain; the power to enact zoning ordinances; the power to regulate for the general health, safety and welfare of the A membership; and the power to collect local taxes. When these powers are viewed as a whole, they are equivalent to the power of government.

Further, this office has consulted with the United States Department of the Interior regarding Tribe and A. The United States Department of the Interior has opined that Tribe has effectively delegated sovereign powers to A. Accordingly, after consultation with the Secretary of the Interior, we conclude that within the meaning of § 7871(d), A has been delegated the power to exercise one or more of the substantial governmental functions of Tribe. Therefore, for purposes of § 7871, A will be treated as a political subdivision of a state.

CONCLUSION

A is a political subdivision of Tribe.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Although A is not required to file federal income tax returns, a copy of this letter must be attached to any income tax return to which it is relevant.

This ruling is based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the submissions, the material is subject to verification on examination.

Sincerely,

Elizabeth Purcell

Chief, Exempt Organizations Branch 2

Office of District Counsel/Associate Chief Counsel (Tax Exempt and Government Entities)

Enclosure:

Copy for 6110 purposes

This document may not be used or cited as precedent. [Section 6110\(j\)\(3\) of the Internal Revenue Code](#).

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